

MINING.

No. 100 of 1985.

AN ACT to amend the Mining Act 1978.

[Assented to 4 December 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Mining Amendment Act 1985*.

Short title
and citation.

(2) In this Act the Mining Act 1978 is referred to as the principal Act.

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Commence-
ment.

2. The several provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

Section 4
repealed and
re-enacted.

3. Section 4 of the principal Act is repealed and re-enacted with amendments as follows—

Transitional
provisions.

“ 4. The transitional provisions set forth in the Second Schedule to this Act, as from time to time modified to prevent anomalies or otherwise affected by the operation of clause 15 of that Schedule, shall have effect without prejudice, except in so far as those transitional provisions are not consistent with such an application, to the application of—

(a) in so far as that Act applies, the Interpretation Act 1918 and in particular sections 15 and 16 thereof;
and

(b) in any other case, the Interpretation Act 1984 and in particular Part V thereof. ”.

Section 6
amended.

4. Section 6 of the principal Act is amended by deleting “as enacted on the commencing date”.

Section 8
amended.

5. (1) Section 8 of the principal Act is amended by inserting in the appropriate alphabetical sequence in subsection (1) the definitions following—

“ “agricultural” used in relation to the purposes for which land is occupied, includes cropping or pasturing purposes;

“burial ground” means an area of land reserved or demarcated exclusively for the purpose of burials;

“damage”, in relation to agricultural land, includes the disturbance of stock and any proper cost reasonably incurred for the purpose of rectifying that disturbance;

"Director-General of Mines" means the person for the time being holding or acting in the office of Permanent Head of the Department;

"fossick" means to search for, extract and remove rock, ore or minerals, other than gold or diamonds, in quantities not exceeding the prescribed amount and by means not prohibited under the regulations, as samples or specimens for the purpose of a mineral collection, lapidary work or a hobby interest;

"land under cultivation" means land being used for agricultural purposes and includes any land, whether cleared or uncleared, used by a person for the grazing of stock in the ordinary course of management of the land of that person where the land so used for grazing forms the whole or a part of the land owned or occupied by that person;

"lapidary work" includes the selection, cutting, polishing, engraving and setting of rock or other minerals;

"vehicle" includes an aircraft, helicopter or air cushion vehicle; ".

(2) Section 8 of the principal Act is amended in subsection (1) by deleting the definitions of "section" and "Under Secretary".

(3) Section 8 of the principal Act is amended in subsection (1)—

(a) in the definition of "Crown land", in paragraph (c), by deleting "for any purpose other than a pastoral or timber purpose" and substituting the following—

" other than—

(i) a pastoral lease within the meaning of the Land Act 1933, or a lease otherwise granted for grazing purposes only; or

(ii) a lease for timber purposes ";

- (b) by deleting the definition of “minerals” and substituting the following—

“ “minerals” includes all naturally occurring substances, not being soil or a substance the recovery of which is governed by the Petroleum Act 1967 or the Petroleum (Submerged Lands) Act 1982, obtained or obtainable from any land by mining operations carried out on or under the surface of the land, including evaporites, limestone, rock, gravel, shale (whether or not oil shale) sand and clay except that where—

(a) limestone, rock or gravel;

(b) shale, other than oil shale;

(c) sand, other than mineral sands, silica sand or garnet sand; or

(d) clay, other than kaolin, bentonite, attapulgit, or montmorillonite,

occurs on private land, that limestone, rock, gravel, shale, sand or clay shall not be taken to be minerals; ”;

- (c) by deleting the definition of “mining” and substituting the following—

“ “mining” includes fossicking, prospecting and exploring for minerals, marking out in connection with an application for a mining tenement, and mining operations; ”;

- (d) in the definition of "mining registrar", by adding, after "so to be", the following—

" and includes a reference to the person holding, acting in, or performing the functions of the office of Director, Mining Registration Division, of the Department ";

- (e) in the definition of "mining tenement" by inserting before "the repealed Act" the following—

" by virtue of ";

- (f) in the definition of "private land"—

- (i) by deleting "other than for pastoral or timber purposes," and substituting the following—

" (not being a pastoral lease within the meaning of the Land Act 1933 or a lease or concession otherwise granted by or on behalf of the Crown for grazing purposes only or for timber purposes) ";

- (ii) in paragraph (a), by deleting "Division; and" and substituting the following—

" Division; ";

- (iii) by deleting paragraph (b) and substituting the paragraph following—

" (b) other than in so far as the primary tenement may be treated as private land in relation to mining for gold pursuant to a special prospecting licence or mining lease under section 56A or

section 70, does not include land that is the subject of a mining tenement; and ”;

and

(iv) by adding the new paragraph following—

“ (c) no land that has been reserved for or dedicated to any public purpose shall be taken to be private land by reason only that any lease or concession is granted in relation thereto for any purpose; ”; and

(g) in the definition of “warden” by adding after “or deemed so to be” the following—

“ and includes a person appointed to be an acting warden ”.

Section 12
amended.

6. Section 12 of the principal Act is amended in subsection (1) by deleting “to any officer of the Department” and substituting the following—

“ to—

(i) any officer of the Department; or

(ii) the person for the time being occupying a position in the Department,

being an officer named or a position specified in the instrument of delegation ”.

Section 13
amended.

7. Section 13 of the principal Act is amended—

(a) as to subsection (1), by adding after “warden of mines” the following—

“ and is thereby authorized and empowered to preside in a warden’s court ”;

- (b) as to subsection (2), by deleting “determines.” and substituting the following—

“ determines, but a person so appointed is not thereby authorized or empowered to preside in a warden’s court. ”; and

- (c) by adding the subsection following—

“ (4) A person who holds office under the Public Service Act 1978 may, with the consent of the Public Service Board, be appointed to hold or act in the office of a mining registrar notwithstanding that he is not a person appointed to the Department pursuant to section 11 and that person shall, whilst holding, acting in or performing the functions of the office of mining registrar, be deemed for the purposes of this Act to be an officer of the Department. ”.

8. Section 14 of the principal Act is amended— Section 14
amended.

- (a) in subsection (1)—

- (i) by inserting after “warden” where it first occurs the following—

“ , whether appointed under subsection (1) or subsection (2) of section 13, ”;

- (ii) by deleting “governor” and substituting the following—

“ Governor ”; and

- (iii) by deleting “to be an acting warden” and substituting the following—

“ to act in the office of such warden ”; and

- (b) in subsection (2) by deleting “is acting as a warden” and substituting the following—

“ acts in the office of a warden ”.

Section 15
amended.

9. Section 15 of the principal Act is amended in subsection (2)—

(a) by deleting “An officer” and substituting the following—

“ A warden or an officer ”; and

(b) by deleting “employment” and substituting the following—

“ appointment as a warden or ”.

Section 17
repealed.

10. Section 17 of the principal Act is repealed.

Section 18
amended.

11. Section 18 of the principal Act is amended—

(a) by deleting “Subject to and in accordance with this Act, all Crown land” and substituting the following—

“ All Crown land, ”; and

(b) by inserting after “open for mining” the following—

“ and as such is land—

(a) where any person may set up pegs or otherwise mark out the land pursuant to section 104 in connection with an application for a mining tenement;

(b) where the holder of a Miner’s Right may do the things authorized by section 20; and

(c) which may be made the subject of an application for a mining tenement,

subject to and in accordance with this Act. ”.

12. Section 19 of the principal Act is amended in subsection (3), by deleting “, ceases to be subject to the operation of this Act” and substituting the following—

Section 19
amended.

“ may be dealt with by the Minister in accordance with this section and to that extent is not subject to the other provisions of this Act ”.

13. (1) Section 20 of the principal Act is amended in subsection (1)—

Section 20
amended.

(a) by deleting “the Under Secretary for Mines” and substituting the following—

“ the Director-General of Mines ”; and

(b) by inserting after “upon” the following—

“ being satisfied as to the identity of the applicant and ”.

(2) Section 20 of the principal Act is amended in subsection (2)—

(a) in paragraph (a), by deleting “open for mining” and substituting the following—

“ which may be made the subject of an application for a mining tenement ”;

(b) in paragraph (b), by deleting “determining which area of the land” and substituting the following—

“ ascertaining whether any part of the land, and if appropriate determining which area, ”;

(c) in paragraph (c)—

(i) by deleting “not exceeding the prescribed quantity”;

- (ii) by deleting “for testing purposes only,”;
- (iii) by inserting after “possible” the following—
 - “ , in quantities, in total or on occasions, not exceeding the prescribed limits, ”; and
- (iv) by inserting after “property” the following—
 - “ or to utilise for testing or evaluation purposes any ”;
- (d) in paragraph (d), by inserting after “1914,” the following—
 - “ or any Act amending or replacing the relevant provisions of that Act, ”;
- (e) in paragraph (e)—
 - (i) by deleting “timber, to cut and remove timber from such land for the purpose of prospecting, and to erect and remove any building or structure on any such land lawfully occupied by him for the purpose of prospecting, and remove the building or structure in such manner” and substituting the following—
 - “ timber—
 - (i) to cut and remove timber from such land for the purpose of prospecting; and
 - (ii) to erect, use and remove any building or structure on any such land lawfully occupied by him for the purpose of prospecting,
 - in such manner ”; and

- (ii) by deleting "prescribed." and substituting the following—

" prescribed; and

- (f) subject to the prior written consent of—

(i) any occupier of that Crown land; and

(ii) the holder of the mining tenement concerned,

to fossick by prescribed means on Crown land, whether or not land which is held as a mining tenement. "

(3) Section 20 of the principal Act is amended in subsection (3)—

- (a) by deleting "under the authority of" and substituting the following—

" in the exercise or purported exercise of an authorization conferred or alleged to be conferred by ";

- (b) in paragraph (a)—

- (i) by inserting after "filled in" the following—

" or otherwise made safe "; and

- (ii) by deleting "as the Minister directs; and" and substituting the following—

" made, wholly or in part, by him as the Minister may from time to time direct; "; and

- (c) in paragraph (b), by deleting “or otherwise.” and substituting the following—

“ , the use of vehicles or otherwise; and

- (c) be liable to pay compensation in accordance with section 123, as may be agreed or as may be determined by the Warden’s Court on the application of the owner or occupier of the land or of the holder of any mining tenement affected, for any loss or damage caused by, and not made good by, that person in relation to any land or mining tenement while he was so acting,

and a determination made by the Warden’s Court under this subsection is for the purposes of subsection (1) of section 147, a final determination of the Warden’s Court. ”.

- (4) Section 20 of the principal Act is amended in subsection (5)—

- (a) by deleting “prospect, explore, mine or interfere with” and substituting the following—

“ prospect or fossick on, explore, or mine on or under, or otherwise interfere with, ”;

- (b) in paragraph (c), by deleting “Crown” and substituting the following—

“ any ”;

- (c) by deleting paragraph (e) and substituting the following—

“ (e) land the subject of a pastoral lease within the meaning of the Land Act 1933 which is the site of, or is situated within 400 metres of the outer edge of, any water works, race, dam, well or bore, not being an excavation previously made and used for mining purposes by a person other than a lessee of that pastoral lease, ”;

- (d) by inserting after “unless the warden” the following—

“ in relation to any land other than land referred to in paragraph (c) of this subsection ”;

- (e) by deleting “prospecting on, exploring, mining or marking out” and substituting the following—

“ prospecting or fossicking on, exploring, mining on or under, or marking out ”;

and

- (f) by inserting after “that other land”, at the end of the subsection, the following—

“ but a warden shall not make an order under this subsection unless he is satisfied that the land is *bona fide* required for mining purposes and he is satisfied that compensation in accordance with section 123 for all loss or damage suffered or likely to be suffered by an owner or occupier of the land has been agreed upon or otherwise determined, or is assessed and settled in accordance with this Act by the warden ”.

(6) Section 20 of the principal Act is amended in subsection (5a)—

- (a) in paragraph (a), by deleting “subsection (5) (f)” and substituting the following—

“ paragraph (f) of subsection (5) ”;

- (b) in paragraph (b), by deleting “subsection (5) (g)” and substituting the following—

“ paragraph (g) of subsection (5) ”;

- (c) in paragraph (d), in subparagraph (i), by deleting “or otherwise” and substituting the following—

“ , the use of vehicles or otherwise ”;

- (d) in paragraph (e), by deleting “prospecting on, exploring, mining or marking out” and substituting the following—

“ prospecting or fossicking on, exploring, mining operations on or under, or marking out ”; and

- (e) by inserting after “that holder”, at the end of the subsection, the following—

“ , and, in respect of land under cultivation, for any other loss or damage for which that holder is liable in accordance with section 123 ”.

(7) Section 20 of the principal Act is amended in subsection (5b) by deleting “referred to in paragraph (a) of this subsection”.

(8) Section 20 of the principal Act is amended by repealing subsection (6).

14. Section 21 of the principal Act is amended—

Section 21
amended.

(a) in subsection (1)—

- (i) by deleting “The Governor may from time to time under and subject to the Public Works Act 1902, resume on behalf of the Crown any land” and substituting the following—

“ Any land, including land under the surface ”;

- (ii) by deleting “that in his opinion” and substituting the following—

“ that in the opinion of the Governor on the recommendation of the Minister ”;

- (iii) by inserting after “this Act” the following—

“ is hereby authorized to be taken or resumed on behalf of the Crown pursuant to the the Public Works Act 1902 as though the taking or resumption were required for a public purpose ”;

- (iv) by deleting “the purpose of any such proposed resumption” and substituting the following—

“ that purpose the Minister or the Minister administering that Act ”;

and

- (v) by inserting after “operations”, at the end of the subsection, the following—

“ in accordance with that Act ”;

- (b) by repealing subsection (2) and re-enacting it with amendments as follows—

“ (2) At the request of a person interested in land to which subsection (1) refers, any other land that is being or is intended to be used in conjunction with that land may be, and is hereby authorized to be, taken or resumed on behalf of the Crown in accordance with that subsection if the Governor, on the recommendation of the Minister, so determines. ”;

- (c) in subsection (3)—

- (i) by deleting “any such resumption” and substituting the following—

“ the taking or resumption of any land pursuant to this section ”;

and

- (ii) by deleting “such compensation, no” and substituting the following—

“ the compensation to be paid no ”;

and

- (d) in subsection (4)—

- (i) by deleting “When it is proved to the satisfaction of the Compensation Court” and substituting the following—

“ Where it is agreed or a Compensation Court constituted under the Public Works Act 1902 determines ”;

- (ii) by deleting “land resumed” and substituting the following—

“ land taken or resumed ”;

- (iii) by deleting "that Court may order that" and substituting the following—

" the Governor, on the recommendation of the Minister, may determine or that Court may order that in accordance with this section "; and

- (iv) by deleting "so resumed" and substituting the following—

" taken or resumed ".

15. Section 22 of the principal Act is amended— Section 22 amended.

- (a) by deleting "land is resumed pursuant to section 21 the land by force of this section becomes" and substituting the following—

" land is taken or resumed under section 21 pursuant to the Public Works Act 1902 that land shall for the purposes of this Act be taken to be "; and

- (b) by deleting "and shall be open for mining".

16. Section 23 of the principal Act is repealed and re-enacted with amendments as follows— Section 23 repealed and re-enacted.

- " 23. Subject to this Act, a mining tenement may be applied for in respect of any land, or land of a class, to which section 24 or section 25 applies (not being land that is already the subject of a mining tenement) but— Mining on public reserves, etc.

- (a) no mining shall be carried out on or under any such land otherwise than in accordance with a relevant consent obtained in relation to that land under section 24 or section 25; and

(b) a mining tenement held in relation to such land by a person who—

(i) contravenes this section; or

(ii) is in breach of any term or condition to which a consent given under section 24 or section 25 is made subject,

is liable to be forfeited,

and such land is only open for mining as provided in those sections and subject to such terms and conditions as are thereby imposed. ”.

Section 24
amended.

17. Section 24 of the principal Act is amended in subsection (1) in paragraph (d) by inserting after “1918” the following—

“ or any Act repealing or replacing the relevant provisions of that Act ”.

Section 26
amended.

18. Section 26 of the principal Act is amended—

(a) by repealing subsection (2) and re-enacting the subsection with amendments as follows—

“ (2) In relation to any application for a mining tenement in respect of any land, or land of a class, to which section 24 or section 25 applies—

(a) land to which paragraph (a) or paragraph (b) of subsection (1) of section 24 refers may be marked out only with the consent of the Minister and the responsible Minister; and

- (b) land to which paragraph (d) of subsection (1) of section 24 refers may be marked out only in accordance with such conditions and restrictions, if any, as are lawfully prescribed pursuant to paragraph (h) of subsection (1) of section 128 of the Conservation and Land Management Act 1984,

but otherwise the land shall be marked out as a mining tenement in accordance with this Act. ”; and

(b) by adding the subsection following—

- “ (3) The responsible Minister for the purposes of subsection (2) of this section is the person who is the responsible Minister in relation to the land as determined pursuant to subsection (8) of section 24. ”.

19. Section 27 of the principal Act is amended by repealing subsection (1) and re-enacting it with amendments as follows—

Section 27
amended.

- “ (1) Subject to this Act, a mining tenement may be applied for in respect of any private land (which for the purposes of this Division does not include private land that is the subject of a mining tenement, other than in relation to mining for gold pursuant to a special prospecting licence or mining lease under section 56A or section 70 in which case the land which is the subject of the application for that licence or lease is to be dealt with as private land) and such land is open for mining in accordance with this Act. ”.

Section 29
amended.

20. Section 29 of the principal Act is amended—

- (a) by inserting before “surface”, wherever it occurs, the following—

“ natural ”;

- (b) in paragraph (c) of subsection (2) by deleting “reservoir” and substituting the following—

“ dam, bore, well or spring ”;

- (c) in subsection (5) by adding, after “already granted” at the end of the subsection, the following—

“ and that portion, whilst the right so to apply subsists, is not open for mining to any other person ”;

and

- (d) in paragraph (b) of subsection (7) by deleting “ingress thereto and egress therefrom” and substituting the following—

“ access ”;

Section 30
amended.

21. Section 30 of the principal Act is amended—

- (a) in subsection (2), in paragraph (b), by deleting “will enable the warden to determine if it” and substituting the following—

“ are sufficient to enable the warden to be satisfied that the land ”;

- (b) in subsection (3)—

- (i) in paragraph (b), by adding after “conditions,” the following—

“ not being conditions preventing the marking out of any mining tenement or the maintenance of any marks or notices relating thereto, ”; and

- (ii) by adding, after "permit" at the end of the section, the following—

" and, where the holder of the permit marks out and applies for a mining tenement in relation to that land or any part thereof, the permit shall be deemed to continue in force, for the purpose only of repairing or maintaining the marks so set up and the notices posted thereon, until such time as the application for the mining tenement is determined "; and

- (c) by adding the subsection following—

" (7) A permit under subsection (3) of this section shall be deemed to be held subject to the condition that the holder is liable—

(a) in accordance with section 123, in respect of loss or damage arising out of the lawful exercise of the authorization conferred by the permit; and

(b) generally for any loss or damage arising by reason of any entry on the land effected in purported pursuance of the authorization conferred by the permit where the exercise of that authorization contravened conditions to which the permit was subject or the entry was otherwise unlawful. "

Section 31
amended.

22. Section 31 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “authorized agent” and substituting the following—

“ authorized employee or agent ”;

(ii) by deleting “holder or his agent” and substituting the following—

“ holder, his employee or agent ”;

(iii) by deleting “holder of the permit or his agent” and substituting the following—

“ holder of the permit, his employee or agent ”;

Section 32
amended.

23. Section 32 of the principal Act is amended in subsection (1)—

(i) by deleting “authorized agent” and substituting the following in both places where it appears—

“ authorized employee or agent ”;

(ii) by inserting after “relates” in paragraph (a) the following—

“ and to search thereon for any mineral and to mark out, and repair and maintain the marks set up and notices

relating to the application for one or more mining tenements with respect to that land or any part thereof ”;

and

- (iii) by deleting “and to mark out a mining tenement with respect to that land or any part thereof,” in paragraph (c).

24. Section 33 of the principal Act is amended— Section 33 amended.

(a) in subsection (1)—

- (i) by deleting “Where” and substituting the following—

“ Subject to subsection (1a) of this section, where ”;

- (ii) by inserting after “given” the following—

“ in the prescribed manner ”;

- (iii) by deleting “as prescribed”;

- (iv) by deleting “, but if there is no occupier, notice of the application shall be affixed in some conspicuous place on the land”; and

- (v) by deleting “land.”, at the end of the subsection, and substituting the following—

“ land,

but if there is no occupier of the land, or no such occupier can be found, the notice of the

application shall be affixed in some conspicuous manner on the land. ”;

(b) by inserting after subsection (1) the subsections following—

“ (1a) Where the application for a mining tenement relates only to that portion of the land that is not less than 30 metres below the lowest part of the natural surface of the private land, it shall not be necessary to give notice of the application to the owner or occupier or to a mortgagee of the land, but no application shall be made under subsection (5) of section 29 or otherwise in respect of that portion of the land that is less than 30 metres below the lowest part of the natural surface unless notice is given in accordance with subsection (1) notwithstanding the prior grant of an application for a mining tenement over any portion of the land.

(1b) Where the application relates to land to which subsection (2) or subsection (5) of section 29 applies, the applicant shall be required to establish that both the owner and the occupier have consented in writing to the grant of the mining tenement concerned but otherwise, subject to the determination of the amount of any compensation payable in accordance with section 123, a mining tenement in respect of private land may be granted in accordance with this Act. ”; and

(c) in subsection (2)—

(i) by inserting after “private land” the following—

“ or any portion of that land ”;

and

(ii) by deleting “before the application is granted” and substituting the following—

“ in relation to any application in respect of any portion of that land ”.

25. Section 35 of the principal Act is amended— Section 35 amended.

(a) by inserting before “surface” wherever it appears the following—

“ natural ”; and

(b) in subsection (2), by adding after “dead” the following—

“ or is otherwise incapacitated at law ”.

26. Section 38 of the principal Act is amended Section 38 amended.
in subsection (2)—

(a) by deleting “and be granted”; and

(b) by inserting after “that subsection” the following—

“ , or if he so applies but a tenement is not granted, ”.

Section 40
amended.

27. Section 40 of the principal Act is amended—

(a) in subsection (1), by adding after “licence”, at the end of the subsection, the following—

“ which shall be subject to such conditions as are prescribed or are imposed pursuant to section 24 or 25 or are specified in the licence ”; and

(b) by adding the subsection following—

“ (4) Where on an application for a prospecting licence—

(a) the applicant satisfies the mining registrar that the land to which the application relates is unoccupied Crown land or is Crown land which is used for grazing purposes only under—

(i) a pastoral lease within the meaning of the Land Act 1933; or

(ii) a lease otherwise granted by or on behalf of the Crown for grazing purposes only,

but is otherwise unoccupied;

(b) no notice of objection is lodged at the office of the mining registrar within the prescribed time; and

(c) the applicant satisfies the mining registrar that all persons required pursuant to subsection (2) of section 41, or section 118, to be served with a

notice of the application have been so served, and that a period of not less than 30 days has elapsed thereafter,

the approval of the warden to the grant of the licence may be deemed to have been given and a licence in the prescribed form may thereupon be issued by the mining registrar, and for the purposes of this subsection land shall be taken to be unoccupied if it is not land to which paragraph (a), (b), (c), (d) or (e) of subsection (5) of section 20 applies. ”.

28. Section 41 of the principal Act is amended— Section 41 amended.

(a) in subsection (1)—

(i) by deleting paragraph (c) and substituting the paragraph following—

“ (c) shall be made by reference to a written description of the area of land in respect of which the licence is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area; ”; and

(ii) in paragraph (e), by deleting “warden” and substituting the following—

“ mining registrar ”;

(b) in subsection (2), by deleting the comma after “relates”; and

(c) in subsection (3), by inserting before “warden”, wherever it occurs, the following—

“ mining registrar or ”.

Section 42
amended.

29. Section 42 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “An” and substituting the following—

“ Subject to subsection (4) of section 40, an ”; and

(ii) by inserting after “court” the following—

“ on a day appointed by him ”;

and

(b) in subsection (2)—

(i) by deleting “warden’s office” and substituting the following—

“ office of the mining registrar ”;

and

(ii) by adding after “objection”, at the end of the subsection the following—

“ and he may be heard by the warden in opposition to the granting of the application ”.

Section 44
amended.

30. Section 44 of the principal Act is amended by deleting “by the warden”.

Section 45
amended.

31. Section 45 of the principal Act is amended—

(a) in subsection (3)—

(i) by deleting “the Minister shall, subject to subsection (4) of this section and if” and substituting the following—

“ where ”;

- (ii) by deleting "prospecting licence for gold or precious stones or both" and substituting the following—

" special gold prospecting licence ";

- (iii) in paragraph (a), by deleting "to him" and substituting the following—

" in the prescribed form "; and

- (iv) by inserting, before "extend", the following—

" the Minister or an officer of the Department authorized in writing by the Minister may, unless subsection (4) of this section applies, ";

- (b) in subsection (4),—

- (i) by deleting "The Minister shall not" and substituting the following—

" An application to "; and

- (ii) by inserting, after "section", the following—

" shall not be granted "; and

- (c) in subsection (5), by deleting "until that application is finally disposed of" and substituting the following—

" for the period during which that application has effect but shall be taken to have expired on the date on which any such application is refused ".

Section 46
amended.

32. Section 46 of the principal Act is amended—

- (a) by deleting “by the Minister or the warden”; and
- (b) by inserting, before “or otherwise.” at the end of the section, the following—

“ the use of vehicles ”.

Section 47
amended.

33. Section 47 of the principal Act is amended—

- (a) by deleting “It shall not be necessary for the land the subject of a prospecting licence to be surveyed unless” and substituting the following—

“ On an application for a prospecting licence or on a prospecting licence being granted the land affected is not thereby required to be surveyed, but where ”; and

- (b) by deleting “, in which case”.

Section 48
amended.

34. Section 48 of the principal Act is amended—

- (a) in paragraph (b)—
 - (i) by inserting after “25” a comma; and
 - (ii) by inserting before “sinking” the following—

“ and ”;

- (b) in paragraph (c), by deleting “a prescribed amount of ore or” and substituting the following—

“ ore in such amount, in total or on occasions not exceeding the prescribed limits, or in ”;

and

- (c) in paragraph (d)—

- (i) by inserting after “1914,” the following—

“ or any Act amending or replacing the relevant provisions of that Act, ”;

- (ii) by inserting after “such land” the following—

“ or from any excavation previously made and used for mining purposes ”; and

- (iii) by inserting before “to sink” the following—

“ subject to that Act ”.

35. Section 49 of the principal Act is amended— Section 49 amended.

- (a) in subsection (1), by deleting “and have granted to him” and substituting the following—

“ , and subject to subsection (6) of that section to have granted pursuant to subsection (5) of section 75, ”; and

- (b) by repealing subsection (2) and re-enacting it with amendments as follows—

“ (2) Where an application for a mining lease or a general purpose lease is made by the holder of a prospecting

licence in respect of any land and the term of the prospecting licence would but for this subsection expire, that licence shall continue in force in respect to the land the subject of that application until the application for a lease is determined. ”.

Section 52
amended.

36. Section 52 of the principal Act is amended by repealing subsection (1) and re-enacting it with amendments as follows—

Security
relating to
prospecting
licence.

“ 52. (1) The applicant for a prospecting licence shall lodge with the mining registrar within 28 days after lodging that application a security, in respect of each prospecting licence to which the application relates, for compliance with the conditions to which the prospecting licence, if granted, will from time to time be subject and with the provisions of this Part and the regulations. ”.

Section 56A
amended.

37. Section 56A of the principal Act is amended—

(a) by repealing subsection (1) and re-enacting it with amendments as follows—

Special
gold
prospecting
licences.

“ 56A. (1) Where any land is the subject of a prospecting licence (in this section called “the primary tenement”) then, notwithstanding section 117 and whether or not the primary tenement is converted into a mining lease pending the determination of the application for a special prospecting licence, a person may at any time after the expiry of 12 months from—

(a) in the case of land which was the subject of a mineral claim or dredging claim granted under the repealed Act that

by the operation of the transitional provisions set forth in the Second Schedule to this Act became subject to the prospecting licence, the date of approval of the claim;

and

- (b) in any other case, the date on which the prospecting licence was granted,

mark out and, in accordance with section 41, apply for a prospecting licence for gold (in this section called a "special prospecting licence") in respect of any part of the land the subject of the primary tenement. ";

- (b) in subsection (2), by deleting "the prospecting licence first-mentioned in that subsection" and substituting the following—

" the primary tenement ";

- (c) in subsection (3), by deleting "the prospecting licence first-mentioned in subsection (1) of this section" and substituting the following—

" the primary tenement ";

- (d) in subsection (4)—

- (i) by deleting "the prospecting licence first-mentioned in subsection (1) of this section" and substituting the following—

" the primary tenement "; and

- (ii) by deleting "or precious stones or both";

- (e) in subsection (6)—

- (i) in paragraph (b), by deleting "or precious stones or both";

- (ii) in paragraph (c), by deleting "the prospecting licence first-mentioned in subsection (1) of this section" and substituting the following—

" the primary tenement ";

- (iii) in paragraph (c), by deleting "or precious stones";

- (iv) in paragraph (c), by deleting "licence.", at the end of the paragraph, and substituting the following—

" licence; "; and

- (v) by adding the paragraphs following—

" (d) does not authorize the holder thereof to extract or remove during the period for which the tenement remains in force ore in excess of 500 tonnes, except in so far as the prior written approval of the Minister may otherwise permit; and

(e) does not authorize mining to be carried out in any portion of the land that is 50 metres or more below the lowest part of the natural surface of the land the subject of the special prospecting licence. ";

- (f) by inserting, after subsection (6), the subsection following—

" (6a) A special prospecting licence—

(a) continues in force in accordance with the provisions of section 45 notwithstanding

that the holder of the primary tenement may apply for and be granted a mining lease or general purpose lease in respect to the land; but

- (b) ceases (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that special prospecting licence. ”;

- (g) by repealing subsection (7) and re-enacting it with amendments as follows—

“ (7) No legal or equitable interest in or affecting—

- (a) a special prospecting licence;

or

- (b) a mining lease in respect of the land or any part thereof the subject of a special prospecting licence,

is capable of being created, affected or dealt with, whether directly or indirectly, except with the prior written consent of the holder of the primary tenement, and no person shall hold or have any beneficial interest in more than one such special prospecting licence or mining lease or legal or equitable interest therein. ”;

- (h) by adding, after subsection (7), the subsections following—

“ (7a) A reference in subsection (7) of this section to a person includes a reference to any other person who

would, for the purposes of the *Companies (Western Australia) Code*, be taken to be associated with the first-mentioned person.

(7b) No more than one special prospecting licence, or mining lease in respect of the land or any part thereof which is the subject of a special prospecting licence, shall be granted in respect of the primary tenement. ”;

(j) in subsection (8)—

(i) by deleting “or precious stones or both” where it first occurs;

(ii) in paragraph (a), by deleting “the prospecting licence first-mentioned in subsection (1) of this section” and substituting the following—

“ the primary tenement ”;

(iii) in paragraph (b), by deleting “or precious stones or both exist” and substituting the following—

“ exists ”;

(iv) by deleting “grant that application” and substituting the following—

“ grant the application for a lease in respect to that portion of the land to which the special prospecting licence relates that is less than 50 metres below the lowest part of the natural surface of the land and ”; and

- (v) by deleting “the prospecting licence first-mentioned in subsection (1) of this section” and substituting the following—

“ the primary tenement (whether or not the primary tenement has in the meantime been converted into a mining lease) ”;

- (k) by adding, after subsection (8), the subsection following—

“ (8a) A mining lease granted pursuant to subsection (8) of this section—

- (a) has effect in relation to gold and any minerals occurring in conjunction with that gold;
- (b) does not authorize the lessee thereof, his agents or employees to extract or remove ore in excess of 750 tonnes in any year;
- (c) does not authorize mining to be carried out in any portion of the land that is 50 metres or more below the lowest part of the natural surface of the land in respect of which the lease was granted; and
- (d) ceases to have effect (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that lease. ”; and

- (l) by repealing subsection (10).

Section 57
amended.

38. Section 57 of the principal Act is amended in subsection (2), by inserting, after "not less than 10 square kilometres" in paragraph (a), the following—

" , unless paragraph (a) of subsection (4) of section 105A applies, ".

Section 58
amended.

39. Section 58 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting "and" at the end of subparagraph (iii) of paragraph (b) and at the end of paragraph (d);
and

(ii) in paragraph (d), by deleting "warden" and substituting the following—

" mining registrar ";

(b) in subsection (2)—

(i) by deleting paragraph (a) and substituting the paragraph following—

" (a) The application shall be made by reference to a written description of the area of land in respect of which the licence is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area. "; and

(ii) in paragraph (b), by deleting "Where" and substituting the following—

" On an application for an exploration licence or on an exploration licence being

granted the land affected is not thereby required to be surveyed, but where ”;

- (c) in subsection (3), by inserting before “warden”, wherever it occurs, the following—

“ mining registrar or ”; and

- (d) in subsection (4), by deleting the comma after “application”.

40. Section 59 of the principal Act is amended— Section 59 amended.

- (a) in subsection (1), by inserting after “court” the following—

“ on a day appointed by him ”;

- (b) in subsection (2), by deleting “warden’s office” and substituting the following—

“ office of the mining registrar ”;

- (c) in subsection (3), by adding after “licence” the following—

“ and setting out the warden’s reasons for his recommendation ”; and

- (d) in subsection (4), by deleting “or not”.

41. Section 60 of the principal Act is amended, Section 60 amended.
in subsection (1), by deleting “at the Department at Perth within twenty-eight days of the warden’s recommendation for the granting of the” and substituting the following—

“ with the mining registrar within 28 days after lodging that ”.

Section 63
amended.

42. Section 63 of the principal Act is amended, in paragraph (c), by inserting before "or otherwise." at the end of the section, the following—

" the use of vehicles ".

Section 63A
amended.

43. Section 63A of the principal Act is amended, in paragraph (b), by deleting "the conditions referred to in sections 62 and 63, to which the exploration licence is subject" and substituting the following—

" the prescribed expenditure conditions referred to in section 62, and any conditions to which the licence is deemed to be subject pursuant to section 63, ".

Section 64
repealed and
re-enacted.

44. Section 64 of the principal Act is repealed and re-enacted with amendments as follows—

Consent to
dealings in
exploration
licence.

" 64. (1) During the first year of the term for which an exploration licence is granted, a legal or equitable interest in or affecting an exploration licence shall not be transferred or otherwise dealt with, whether directly or indirectly, unless—

(a) the dealing arises in the due administration of the estate or affairs of a holder—

(i) who is dead;

(ii) who is a person who is an insolvent under administration within the meaning of the *Companies (Western Australia) Code*;

- (iii) who is otherwise incapacitated at law; or
- (iv) which is in the course of being wound up (not being a voluntary winding up); or
- (b) prior written consent to the dealing is given by the Minister or an officer of the Department acting with the authority of the Minister.

(2) Nothing in subsection (1) of this section prevents, or affects the validity of, any agreement made in contemplation of a dealing to which that subsection applies where the agreement expressly provides that the consent required by that subsection is to be obtained as a condition of the dealing. ”.

45. Section 65 of the principal Act is amended— Section 65
amended.

- (a) by repealing subsection (2) and substituting the subsection following—

“ (2) For the purposes of subsection (1) of this section—

- (a) if, during the first 3 years of the term for which an exploration licence was granted, the holder—

- (i) is granted a mining lease or general purpose lease of land then the subject of the exploration licence; or

- (ii) surrenders a part of the area then the subject of the exploration licence,

in calculating the area of land that is required to be surrendered under paragraph (a) of that subsection an area to which subparagraph (i) or (ii) of this subsection applies shall, at the expiration of the third year of the term, be taken into account as though it were an area then surrendered in satisfaction of that requirement; and

(b) if, during the fourth year of the term for which an exploration licence is granted, the holder—

(i) is granted a mining lease or general purpose lease of land then the subject of the exploration licence; or

(ii) surrenders a part of the area then the subject of the exploration licence,

in calculating the area of land that is required to be surrendered under paragraph (b) of that subsection an area to which subparagraph (i) or (ii) of this subsection applies shall, at the expiration of that year, be taken into account as though it were an area then surrendered in satisfaction of that requirement. ”;

(b) in subsection (3)—

- (i) by deleting “notify the Under Secretary in the prescribed form of the particulars of” and substituting the following—

“ in the prescribed manner notify the Director-General of Mines as to ”; and

- (ii) by adding after “licence”, at the end of the subsection, the following—

“ and, in accordance with section 95, in the prescribed manner surrender the balance of the land on the date on which that land is required to be surrendered ”;

and

- (c) in subsection (4), by deleting “fails to so notify the Under Secretary at least one month before the date on which an area of land is required to be surrendered pursuant to” and substituting the following—

“ does not comply with ”.

46. Section 66 of the principal Act is amended— Section 66
amended.

- (a) in paragraph (b), by inserting “and” before “sinking”; and

(b) in paragraph (d)—

- (i) by inserting after “1914,” the following—

“ or any Act amending or replacing the relevant provisions of that Act ”;

(ii) by inserting after “such land” the following—

“ or from any excavation previously made and used for mining purposes ”; and

(iii) by inserting before “to sink” the following—

“ subject to that Act ”.

Section 67
amended.

47. Section 67 of the principal Act is amended—

(a) in subsection (1), by deleting “and have granted to him” and substituting the following—

“ , and subject to subsection (6) of that section to have granted pursuant to subsection (5) of section 75, ”; and

(b) by repealing subsection (2) and re-enacting it with amendments as follows—

“ (2) Where an application for a mining lease or a general purpose lease is made by the holder of an exploration licence in respect of any land and the term of the expiration licence would but for this subsection expire, that licence shall continue in force in respect to the land the subject of that application until the application for a lease is determined. ”.

Section 69
amended.

48. Section 69 of the principal Act is amended—
by deleting “surrendered, forfeited, expires” and substituting the following—

“ surrendered or forfeited, or expires, ”.

49. Section 70 of the principal Act is amended— Section 70 amended.

- (a) by repealing subsection (1) and re-enacting it with amendments as follows—

“ 70. (1) Where any land is the subject of an exploration licence (in this section called “the primary tenement”) then, notwithstanding section 117 and whether or not the primary tenement is converted into a mining lease pending the determination of the application for a special prospecting licence, a person may at any time after the expiry of 12 months from— Special gold prospecting licences on an exploration licence.

- (a) in the case of land which was the subject of a mineral claim or dredging claim granted under the repealed Act that by the operation of the transitional provisions set forth in the Second Schedule to this Act became subject to the exploration licence, the date of approval of the claim; and

- (b) in any other case, the date on which the exploration licence was granted,

mark out and, in accordance with section 41, apply for a prospecting licence for gold (in this section called a “special prospecting licence”) in respect of any part of the land the subject of the primary tenement. ”;

- (b) in subsection (2), by inserting before “prospecting licence” the following—

“ special ”;

- (c) in subsection (3), by inserting before “prospecting licence” the following—

“ special ”;

(d) in subsection (4), by deleting "or precious stones or both";

(e) in subsection (5), by inserting before "prospecting licence" the following—

“ special ”;

(f) in subsection (6)—

(i) by inserting before "prospecting licence", in both places where it occurs, the following—

“ special ”;

(ii) in paragraph (b), by deleting "or precious stones or both";

(iii) in paragraph (c), by deleting "or precious stones";

(iv) in paragraph (c), by deleting "licence.", at the end of the paragraph, and substituting the following—

“ licence; ”; and

(v) by adding the paragraphs following—

“ (d) does not authorize the holder thereof to extract or remove during the period for which the tenement remains in force ore in excess of 500 tonnes, except in so far as the prior written approval of the Minister may otherwise permit; and

(e) does not authorize mining to be carried out in any portion of the land that is 50 metres

or more below the lowest part of the natural surface of the land the subject of the special prospecting licence. ”;

(g) by inserting, after subsection (6), the subsection following—

“ (6a) A special prospecting licence—

(a) continues in force in accordance with the provisions of section 45 notwithstanding that the holder of the primary tenement may apply for and be granted a mining lease or general purpose lease in respect to the land; but

(b) ceases (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that special prospecting licence. ”;

(h) by repealing subsection (7) and re-enacting it with amendments as follows—

“ (7) No legal or equitable interest in or affecting—

(a) a special prospecting licence;
or

(b) a mining lease in respect of the land or any part thereof the subject of a special prospecting licence,

is capable of being created, affected or dealt with, whether directly or indirectly, except with the prior written

consent of the holder of the primary tenement, and no person shall hold or have any beneficial interest in more than one such special prospecting licence or mining lease or legal or equitable interest therein. ”;

- (j) by adding, after subsection (7), the subsections following—

“ (7a) A reference in subsection (7) of this section to a person includes a reference to any other person who would, for the purposes of the *Companies (Western Australia) Code*, be taken to be associated with the first-mentioned person.

(7b) A special prospecting licence, or a mining lease in respect of the land or any part thereof which is the subject of a special prospecting licence, shall not be granted in respect of the primary tenement where the number of such licences or leases granted in respect of that primary tenement exceeds one for each 200 hectares of the primary tenement. ”;

- (k) in subsection (8)—

- (i) by inserting before “prospecting licence”, in both places where it occurs, the following—

“ special ”;

- (ii) by deleting “or precious stones or both” where it first occurs;

- (iii) in paragraph (b), by deleting “or precious stones or both exist” and substituting the following—

“ exists ”;

- (iv) by inserting after "grant the application" the following—

" for a lease in respect to that portion of the land to which the special prospecting licence relates that is less than 50 metres below the lowest part of the natural surface of the land and "; and

- (v) by deleting "exploration licence", at the end of the subsection, and substituting the following—

" primary tenement (whether or not the primary tenement has in the meantime been converted into a mining lease) ";

- (1) by adding, after subsection (8), the subsection following—

" (8a) A mining lease granted pursuant to subsection (8) of this section—

- (a) has effect in relation to gold and any minerals occurring in in conjunction with that gold;
- (b) does not authorize the lessee thereof, his agents or employees to extract or remove ore in excess of 750 tonnes in any year; and
- (c) does not authorize mining to be carried out in any portion of the land that is 50 metres or more below the lowest part of the natural surface of the land in respect of which the lease was granted; and

(d) ceases to have effect (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that lease. ”;

(m) in subsection (9), by inserting before “prospecting licence”, in the second place where it occurs, the following—

“ special ”; and

(n) by repealing subsection (10).

Section 74
amended.

50. Section 74 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (b), by deleting “the survey fee and”; and

(ii) in paragraph (d), by deleting “warden” and substituting the following—

“mining registrar ”;

(b) in subsection (2), by inserting before “warden”, wherever it occurs, the following—

“ mining registrar or ”; and

- (c) by repealing subsection (4) and re-enacting it with amendments as follows—

“ (4) The application shall be—

(a) made by reference to a written description of the area of the land in respect of which the lease is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area; and

(b) accompanied by the prescribed survey fee. ”.

51. Section 75 of the principal Act is amended— Section 75 amended.

(a) in subsection (2)—

(i) by deleting “warden’s office” and substituting the following—

“ office of the mining registrar ”;

(ii) by deleting “he may” and substituting the following—

“ is entitled to ”; and

(iii) by inserting before “the application”, where it occurs at the end of the subsection, the following—

“ the grant of ”; and

(b) in subsection (3), by adding after “lease” the following—

“ and setting out the warden’s reasons for his recommendation ”.

Section 76
amended.

52. Section 76 of the principal Act is amended by deleting "Where" and substituting the following—

" Subject to the provisions of section 56A and section 70 as regards the special prospecting licences and mining leases therein referred to, where "

Section 78
repealed and
re-enacted.

53. Section 78 of the principal Act is repealed and re-enacted with amendments as follows—

Term of
leases,
options and
renewals.

" 78. (1) Subject to this Act, a mining lease shall remain in force—

(a) for an initial term of 21 years; and

(b) where application for renewal is made in the prescribed manner during the final year of the term of that lease, as from the expiry of the preceding term for a further term of 21 years, as of right but subject in respect of that further term to the provisions of this Act and the regulations thereunder as in force on and after the date of renewal.

(2) Subject to subsection (1) of this section, the Minister may, from time to time upon receipt of an application made in the prescribed manner, renew or further renew a mining lease for successive terms but so that no such term exceeds a period of 21 years.

(3) Where an application for the renewal of a mining lease is made by the holder of the lease and the term of the lease would but for this subsection expire, that lease shall continue in force in respect of the land the subject of that application until the application is determined. "

54. Section 80 of the principal Act is repealed and re-enacted with amendments as follows—

Section 80
repealed and
re-enacted.

“ 80. (1) Land the subject of a mining lease shall be surveyed, but it shall not be necessary for the survey to be carried out prior to the granting of the lease.

Surveys of
mining
leases.

(2) Where an objection is lodged against an application for the grant of a mining lease, the survey of the land to which the application relates shall not be carried out until determination of that objection unless the Minister or the warden, as the case may be, otherwise requires for the purpose of assisting him in coming to a decision upon the application.

(3) Where an application for a mining lease is refused, or is not proceeded with, or the lease is surrendered or forfeited or expires before the survey is carried out the survey fee paid in respect of the application is refundable. ”.

55. Section 81 of the principal Act is repealed.

Section 81
repealed.

56. Section 82 of the principal Act is amended—

Section 82
amended.

(a) in subsection (2), by deleting “fine” and substituting the following—

“ penalty ”; and

(b) by adding the subsection following—

“ (3) Where any penalty imposed as an alternative to forfeiture of the lease pursuant to subsection (2) of this section is not paid within the time specified by the Minister, or within 30 days of written notice of the penalty being given by the Minister to the lessee if no other time is specified by the Minister, the lease shall thereupon be forfeited. ”.

Section 84
amended.

57. Section 84 of the principal Act is amended—

(a) by inserting before “surface”, wherever it occurs, the following—

“ natural ”; and

(b) by adding the subsection following—

“ (4) A condition imposed in relation to a lease under this section—

(a) may, either in full or with sufficient particularity as to identify the recommendation or other source from which it derives, be endorsed on the original and the duplicate of the lease, for which purpose the lessee shall produce the duplicate of the lease on demand;

(b) whether or not so endorsed, on notice of the imposition of the condition being given in writing to the lessee shall for all purposes have effect as a condition to which the lease is subject; and

- (c) where it is set out or otherwise sufficiently identified in the notification of the grant of the lease, shall have effect as though the lease had been issued duly endorsed as to the terms of that condition. ”.

58. Section 85 of the principal Act is amended, Section 85
amended.
in subsection (1) in paragraph (c)—

- (a) by inserting after “1914,” the following—

“ or any Act amending or replacing the relevant provisions of that Act, ”;

and

- (b) by inserting after “such land” the following—

“ or from any excavation previously made and used for mining purposes ”.

59. Section 86 of the principal Act is amended— Section 86
amended.

- (a) in subsection (1)—

- (i) by deleting “a lessee of a mining lease” and substituting the following—

“ any person ”;

- (ii) by deleting “in accordance with section 75”; and

- (iii) by deleting “the mining operations carried out on the mining lease” and substituting the following—

“ mining operations ”;

(b) in subsection (3)—

(i) by deleting “two hundred and fifty” and substituting the following—

“ 10 ”; and

(ii) by inserting after “hectares” the following—

“ and shall be limited to such depth below the natural surface of the land as may be specified in the lease or, where no depth is so specified, to 15 metres below the lowest part of the natural surface of the land ”; and

(c) by adding the subsection following—

“ (4) An application for the grant of a general purpose lease in respect of any land—

(a) shall be made, and may be objected to, in like manner to an application for a mining lease;

(b) shall be heard by the warden in open court on a day appointed by him; and

(c) may be granted by the Minister, subject to such terms and conditions as he thinks fit, or may be refused. ”.

Section 87
amended.

60. Section 87 of the principal Act is amended, in subsection (1)—

(a) in paragraph (a), by deleting “on the mining lease”;

- (b) in paragraph (b), by deleting “the land in respect of which such mining lease was granted” and substituting the following—

“ any land in accordance with this Act ”; and

- (c) in paragraph (c), by deleting “such”.

61. Section 88 of the principal Act is repealed and re-enacted with amendments as follows—

Section 88
repealed and
re-enacted.

- “ 88. (1) Subject to this Act, a general purpose lease remains in force—

Term of
general
purpose lease.

- (a) where it is granted in relation to a particular mining lease and contains no other provision for expiry, until—

(i) it is surrendered or forfeited;
or

- (ii) the date of surrender, forfeiture or expiry of the mining lease (or any renewal thereof) in relation to which it was granted or 21 years from the date on which the general purpose lease was granted, whichever is the longer period;

or

- (b) in any other case, for a period of 21 years or until it is sooner surrendered or forfeited.

(2) The Minister shall, where an application for renewal is made in the prescribed manner during the final year of

the term of that lease, renew a general purpose lease as from the expiry of the preceding term for a further term of 21 years, as of right but subject in respect of that further term to the provisions of this Act and the regulations thereunder as in force on and after the date of renewal. ”.

Section 89
amended.

62. Section 89 of the principal Act is amended by inserting after “may” the following—

“ , from time to time, ”.

Section 91
amended.

63. Section 91 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting after “1914,” the following—

“ or any Act amending or replacing the relevant provisions of that Act, ”;

(ii) by deleting “the holder of a prospecting licence, exploration licence or mining lease grant to such holder” and substituting the following—

“ any person, grant ”; and

(iii) by deleting “that is open for mining, or is” and substituting the following—

“ , including land ”;

- (b) in subsection (2), by deleting "prescribed therein on such terms and conditions as are so prescribed" and substituting the following—

" specified therein and shall remain in force for a period of 5 years subject to this Act but may be renewed or further renewed by the Minister, on application for renewal being made in the prescribed manner, for successive terms but so that no such term exceeds a period of 5 years "; and

- (c) by repealing subsection (4).

64. Section 92 of the principal Act is repealed and re-enacted with amendments as follows—

Section 92
repealed and
re-enacted.

- " 92. Sections 41, 42, 44, 46 and 47 apply, with such modifications as the circumstances require, to and in relation to an application for the grant of a licence under this Division as though in those sections a reference to a prospecting licence was to be construed as a reference to a licence under this Division. "

Provisions
applying to
all miscel-
laneous
licences.

65. Section 93 of the principal Act is amended by repealing subsection (2) and re-enacting it with amendments as follows—

Section 93
amended.

- " (2) The application for the grant of the licence shall be made by reference to a written description of the area of land in respect of which the licence is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area. "

66. Section 94 of the principal Act is amended by repealing subsection (1) and subsection (2) and substituting the subsections following—

Section 94
amended.

- " 94. (1) A licence under this Division is subject to the terms and conditions prescribed.

Terms and
conditions.

(2) In addition to the terms and conditions prescribed in relation to a licence, the warden may make a licence under this Division subject to such further terms and conditions as he thinks fit and specifies in that licence. ”.

Section 95
amended.

67. Section 95 of the principal Act is amended—

(a) in subsection (2), in paragraph (a), by inserting before “surrender” the following—

“ the date of ”;

(b) by repealing subsection (4) and re-enacting it with amendments as follows—

“ (4) Where a mining tenement is being surrendered as to part only, the form of surrender shall be prepared by reference to a written description of the area of the part to be surrendered, and be accompanied by a map on which are clearly delineated the respective boundaries of that mining tenement and of the part of that mining tenement which is being surrendered. ”;

(c) in subsection (5), by inserting after “mining tenement”, where it secondly occurs, the following—

“ , for which purpose the holder shall produce his copy of the document on demand, ”; and

(d) in subsection (6), by deleting “in respect of the whole of the land or the part thereof so surrendered as the case may be, shall absolutely cease and determine on” and substituting the following—

“ in respect of—

(a) the whole of the land the subject of that tenement; or

- (b) that part of that land which is being surrendered,

as the case requires, absolutely ceases and determines in the case of a conditional surrender on the date on which the surrender becomes absolute but otherwise on ”.

68. Section 96 of the principal Act is amended— Section 96 amended.

- (a) in subsection (1)—

- (i) in paragraph (a), by inserting after “Minister or any” the following—

“ mining registrar or other ”;
and

- (ii) by deleting “any mining tenement other than an exploration licence, a mining lease or general purpose lease” and substituting the following—

“ any prospecting licence or a miscellaneous licence granted or acquired under this Act or by virtue of the repealed Act ”;

- (b) in subsection (2), by deleting “An” and substituting the following—

“ An order for forfeiture may be made in relation to a mining tenement to which subsection (1) of this section applies if—

- (a) the prescribed rent or royalty in respect thereof is not paid in accordance with this Act;

- (b) any term or condition to which the mining tenement is subject,

including any condition referred to in section 46 or section 50, is not complied with; or

- (c) the holder of the mining tenement is convicted of an offence against this Act,

but an ”;

- (c) in subsection (3) and subsection (6)—

- (i) by deleting “in lieu of” and substituting the following—

“ as an alternative to ”; and

- (ii) by deleting “fine”, wherever it occurs, and substituting the following—

“ penalty ”; and

- (d) in subsection (8), by deleting “The” and substituting the following—

“ Subject to section 97A, the ”.

Section 96A
amended.

69. Section 96A of the principal Act is amended—

- (a) in subsection (2), by deleting “The” and substituting the following—

“ Subject to section 97A, the ”; and

- (b) by adding the subsections following—

“ (5) The Minister, as he thinks fit in the circumstances of the case, as an alternative to causing the exploration licence to be forfeited, may—

- (a) impose a penalty, not exceeding \$500, upon the holder of the exploration licence;

(b) award the whole or any part of the amount of any such penalty to any person, other than an officer of the Department; or

(c) impose no penalty on the holder.

(6) Where any penalty imposed as an alternative to forfeiture under subsection (5) of this section is not paid within the time specified by the Minister, or within 30 days of written notice of the penalty being given by the Minister to the holder of the exploration licence if no other time is specified by the Minister, the exploration licence is thereby forfeited. ”.

70. Section 97 of the principal Act is amended— Section 97 amended.

(a) in subsection (1), by inserting after “section 82” the following—

“ which is otherwise made a condition to which the lease is subject ”;

(b) in subsection (3), by deleting “The” and substituting the following—

“ Subject to section 97A, the ”; and

(c) by adding the subsections following—

“ (5) The Minister, as he thinks fit in the circumstances of the case, as an alternative to declaring the lease forfeited, may—

(a) impose a penalty, not exceeding \$500, upon the lessee;

(b) award the whole or any part of the amount of any such penalty to any person, other than an officer of the Department; or

(c) impose no penalty on the lessee.

(6) Where any penalty imposed as an alternative to forfeiture under subsection (5) of this section is not paid within the time specified by the Minister, or within 30 days of written notice of the penalty being given by the Minister to the lessee if no other time is specified by the Minister, the lease is thereby forfeited. ”.

Section 97A
inserted.

71. The principal Act is amended by inserting, immediately after section 97, the new section following—

Appeals
against
cancellation
of forfeiture.

“ 97A. (1) Subject to subsection (2) of this section, where a mining tenement is forfeited under or by virtue of section 96, 96A or 97 a person who was, immediately prior to the forfeiture, the holder of the tenement concerned may apply to the warden for the mining tenement to be restored to him and the forfeiture cancelled.

(2) Where the forfeiture was occasioned by non-compliance by the holder with an expenditure condition applicable to the tenement and results from an application made by a person, not being a person acting on behalf of the Department, subsection (1) of this section does not apply.

(3) An application under subsection (1) of this section—

(a) shall be in the prescribed form and made within the prescribed time:

(b) shall be lodged with the mining registrar of the mineral field or the district thereof wherein the land to which the application relates is situated; and

(c) shall be accompanied by the prescribed application fee,

and the applicant shall at the request of the warden furnish such other information, or such evidence in support thereof, as the warden may require but the warden shall not require information or evidence relating to assays or other results of any testing, sampling or other mining operations that the applicant may have carried out on the land the subject of the application.

(4) Within 14 days after the lodging of such an application under subsection (1) of this section, the applicant shall serve such notice of the application as may be prescribed on any person who has since the forfeiture made application for a mining tenement in respect of the land or any part of the land to which the application relates and on such other persons as may be prescribed.

(5) An application under subsection (1) of this section shall be heard by the warden in open court on a day appointed by him.

(6) A person who desires to object to the granting of an application made under subsection (1) of this section shall lodge at the office of the mining registrar within the prescribed time and in the prescribed manner a notice of objection and he may be heard by the warden in opposition to the granting of the application.

(7) On the hearing of an application made under subsection (1) of this section the warden—

(a) in a case to which section 96 applies, shall determine the application and make such order as he thinks fit and may—

(i) grant the application and restore the mining tenement to the former holder;

(ii) grant the application and restore the mining tenement to the former holder subject to such further or other conditions as the warden may specify; or

(iii) refuse the application; and

(b) in any other case, shall as soon as practicable thereafter transmit to the Minister for his consideration the notes of evidence and any maps or other documents referred to therein, and his report recommending the granting or refusal of the application together with his reasons for the recommendation.

(8) On receipt of notes of evidence and any maps or documents transmitted to him pursuant to subsection (7) of this section, the Minister may grant or refuse the application for restoration of the mining tenement, as he determines and whether the warden recommends the granting of the application or the refusal thereof, and may impose on a mining tenement so restored such further or other conditions as the Minister may specify. ”.

72. Section 98 of the principal Act is amended— Section 98
amended.

- (a) in subsection (2), by inserting after “made” the following—

“ , during the expenditure year in relation to which the requirement is not complied with or within 8 months thereafter, ”;

- (b) in paragraph (a) of subsection (4), by deleting “a fine not exceeding five hundred dollars in lieu of” and substituting the following—

“ a penalty not exceeding \$500 as an alternative to ”;

- (c) in paragraph (b) of subsection (4), by deleting “fine”, in both places where it occurs, and substituting the following—

“ penalty ”;

- (d) in subsection (7), by deleting “the warden or”; and

- (e) by adding the subsection following—

“ (9) Where any penalty imposed by a warden as an alternative to forfeiture under subsection (4) of this section is not paid within the time specified by the warden, or within 30 days of the order made by the warden where no other time is specified, the warden shall make a recommendation to the Minister as to whether or not the licence or lease should be forfeited. ”.

73. Section 99 of the principal Act is amended— Section 99
amended.

- (a) by deleting “fine”, wherever it occurs, and substituting the following—

“ penalty ”;

(b) in subsection (1), in paragraph (b)—

- (i) by deleting “forfeiture” where it first occurs and substituting the following—

“ forfeiture; ”;

- (ii) by deleting “and award” and substituting the following—

“ (c) award ”; and

- (iii) by deleting “forfeiture;” and substituting the following—

“ forfeiture; or ”;

(c) in subsection (1), by re-designating paragraph “(c)” to stand as paragraph “(d)”;

(d) in subsection (2)—

- (i) by deleting “decides to forfeit such licence or lease” and substituting the following—

“ declares an exploration licence or lease forfeited under subsection (1) of this section ”;

and

- (ii) by deleting “his determination” and substituting the following—

“ the declaration ”; and

(e) in subsection (3)—

- (i) by deleting “in lieu of”, in both places where it occurs, and substituting the following—

“ as an alternative to ”; and

- (ii) by deleting "Minister's decision to impose a" and substituting the following—

" Minister imposing the ".

74. Section 100 of the principal Act is amended Section 100 amended. by inserting before "the applicant" the following—

" if the applicant for the forfeiture was not the Minister or an officer authorized in writing by the Minister, ".

75. Section 101 of the principal Act is amended— Section 101 amended.

- (a) by inserting before "subsection (3) of section 230 of that Act" the following—

" subsection (2) of section 371 of that Code or of "; and

- (b) by deleting "contained in that Act" and substituting the following—

" therein contained ".

76. Section 102 of the principal Act is amended— Section 102 amended.

- (a) in subsection (1)—

- (i) by deleting "tenement, such" and substituting the following—

" tenement or his authorized agent prior to the end of the year to which the proposed exemption relates, the ";

- (ii) by deleting "relates, from" and substituting the following—

" relates from "; and

- (iii) by deleting “expended in any one year in respect of that mining tenement” and substituting the following—

“ expended—

- (a) in respect to any mining tenement other than a mining lease, in any one year;

and

- (b) in respect to a mining lease, subject to subsection (7) of this section, in a period of 5 years ”;

- (b) in subsection (2)—

- (i) by adding after “future” at the end of paragraph (e) the following—

“ or that at the relevant time economic or marketing problems are such as not to make the mining operations viable ”;

and

- (ii) by deleting “operation.” at the end of the subsection and substituting the following—

“ operation;

- (g) that political, environmental or other difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is, or subject to conditions that are, for the time being impracticable; or

- (h) that the mining tenement is comprised within a project involving more than one tenement, and that expenditure on a tenement or tenements comprised in that project would have been such as to satisfy the expenditure requirements in relation to the tenement concerned had that aggregate expenditure been apportioned in respect of the various tenements comprised in the project. ”;
- (c) in subsection (3), by deleting “the provisions of paragraphs (a), (b), (c), (d), (e) and (f) of” and substituting the following—
 - “ that the reasons given for the application for exemption are not amongst those set out in ”;
- (d) in subsection (4), by deleting “for the reasons specified in paragraphs (b) and (e) of subsection (2) of this section or in subsection (3) of this section regard shall be had” and substituting the following—
 - “ regard shall be had to the current grounds upon which exemptions have been granted and ”;
- (e) in subsection (5), by deleting “in an amount exceeding one-twelfth of the amount required to be expended in any one year in respect of the mining tenement to which that application relates”; and
- (f) by adding the subsections following—
 - “ (6) The warden shall as soon as practicable after the hearing of the application transmit to the Minister for his consideration the notes of evidence and any maps or other documents referred to therein and his

report recommending the granting or refusal of the application and setting out his reasons for that recommendation.

(7) Where the warden finds that the reasons given by the holder of the mining lease are sufficient to justify the granting of a certificate of exemption and so recommends, or if the Minister is satisfied whether or not a recommendation is made by the warden, the Minister may grant a certificate of exemption in an amount not exceeding the amount required to be expended in respect of the mining lease in the period of 5 years from the commencement of the year to which the application relates. ”.

Section 102A
amended.

77. Section 102A of the principal Act is amended in subsection (1)—

(a) by inserting before “on the application” the following—

“ on payment of the prescribed fee and ”; and

(b) by deleting “exemption totally or partially” and substituting the following—

“ a certificate in the prescribed form totally or partially exempting the holder of that licence ”.

Section 103
amended.

78. Section 103 of the principal Act is amended by inserting after “section 102” the following—

“ or section 102A ”.

Section 105
amended.

79. Section 105 of the principal Act is amended—

(a) by deleting “Before” and substituting the following—

“ (1) Before ”; and

(b) by adding the subsection following—

“ (2) Where any land is the subject of an exploration licence and another mining tenement (in this subsection called “the secondary tenement”) situated wholly within the boundaries (whether or not any of those boundaries are common boundaries) of the land the subject of that exploration licence—

(a) is surrendered or forfeited, or expires; and

(b) has not, before an application is made under this subsection, been marked out or applied for under this Act by any other person,

the holder of that exploration licence may, without marking out the land, apply in writing to the Minister for amalgamation of the secondary tenement so surrendered, forfeited or expired with the exploration licence and the Minister may, whether or not he refers the matter to the warden for his recommendation, determine the application and amend the exploration licence to include the land which was the subject of the former secondary tenement, in such manner and on such conditions as he may think fit, or may refuse the application. ”.

80. Section 105A of the principal Act is amended by adding the subsections following—

Section 105A
amended.

“ (3) In the case of an application for an exploration licence, where the warden is satisfied that 2 or more applications in respect of any land lodged with the mining registrar were lodged at the same time, priority shall, in default of written agreement being

concluded by the respective applicants within the prescribed time being lodged with the mining registrar, be determined by ballot conducted by the warden in open court on a date to be determined by him and notified to the applicants.

(4) On the priority of an application being determined under subsection (3) of this section, the applicant who was not accorded priority in accordance with that determination, and if there is more than one such applicant each of the respective applicants in the order of priority determined by the agreement referred to in that subsection or in default of such agreement in accordance with the result of the ballot, has the right in priority over every other applicant, in relation to any part of the land to which the competing applications refer which is not the subject of a mining tenement previously granted to another applicant pursuant to this section, at the option of the applicant—

(a) to have granted to him in respect of that land an exploration licence, notwithstanding that the land may comprise less than 10 square kilometres;

or

(b) within 14 days to mark out and apply for one or more prospecting licences. ”.

Section 105B
inserted.

81. The principal Act is amended by inserting immediately after section 105A, the section following—

Grant of
tenement
subject to
survey.

“ 105B. The grant of a mining tenement shall be deemed to have been made subject to a condition that the land applied for is found to have been available for the purposes of that grant after a survey has been made of the tenement. ”.

82. Section 106 of the principal Act is amended— Section 106 amended.

- (a) by deleting “A person shall not” and substituting the following—

“ A person who ”;

- (b) in paragraph (a), by deleting “remove, destroy or alter” and substituting the following—

“ removes, destroys or alters ”;

- (c) in paragraph (b), by deleting “damage or destroy or otherwise interfere” and substituting the following—

“ damages, destroys or otherwise interferes ”;

- (d) in paragraph (c), by deleting “obstruct, hinder, or interfere” and substituting the following—

“ obstructs, hinders, or interferes ”; and

- (e) by deleting “section.” and substituting the following—

“ section,

is guilty of an offence against this Act. ”.

83. Section 109 of the principal Act is amended— Section 109 amended.

- (a) by deleting “Without prejudice to” and substituting the following—

“ (1) In the exercise of ”;

- (b) by deleting “prescribed.” at the end of subsection (1) and substituting the following—

“ prescribed; and

- (c) provide for penalties, including penalties for continuing offences, for contravention of the requirements of this Act in relation to royalties and the furnishing of information relevant to the assessment of royalties. ”; and

(c) by adding the subsections following—

“ (2) Regulations made under section 162 of this Act may empower the Minister—

(a) to determine by what method a value shall be placed on a mineral or a class of minerals for the purpose of assessing the rate of royalty that shall be paid, and in so doing to take into account market factors, including pricing methods and merchandising practices; and

(b) to exercise a discretion as to the basis on which a rate of royalty shall be applied, taking into account particular circumstances.

(3) For the purposes of this section, a reference to a mineral includes a reference to a material containing that mineral.

(4) Notwithstanding the provisions of any other Act, proceedings in respect of a failure to furnish information relevant to the assessment of royalties or to pay royalties under this Act may be brought within the period of 3 years after the royalty return was required to be submitted or the royalty required to be paid or, with the consent of the Minister, at any later time. ”.

84. Section 115 of the principal Act is amended, Section 115 amended.
in subsection (3)—

- (a) by deleting “ (3) (a) The” and substituting the following—

“ (3) In relation to the exercise of a power under this section—

(a) the ”;

- (b) by deleting “section.” and substituting the following—

“ section; and ”; and

- (c) by deleting “In” and substituting the following—

“ in ”.

85. Section 116 of the principal Act is amended Section 116 amended.
in subsection (2) by inserting after “in the case of fraud” the following—

“ , a mining tenement granted or renewed under this Act shall not be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the grant or renewal of that tenement and ”.

86. Section 117 of the principal Act is amended Section 117 amended.
in subsection (1) by deleting “No” and substituting the following—

“ Subject to the provisions of section 56A and section 70 as regards the special prospecting licences and mining leases therein referred to, no ”.

Section 118
amended.

87. Section 118 of the principal Act is amended—

- (a) by deleting “under a pastoral lease under any Act or regulation relating to Crown lands” and substituting the following—

“ subject to a pastoral lease within the meaning of the Land Act 1933 or a lease otherwise granted by or on behalf of the Crown for grazing purposes only ”; and

- (b) by deleting “the lessee of the pastoral lease” and substituting the following—

“ the holder of that lease ”.

Section 119
amended.

88. Section 119 of the principal Act is amended—

- (a) by repealing subsection (1) and substituting the subsection following—

“ 119. (1) Subject to this Act a legal or equitable interest in a mining tenement may be sold, transferred, mortgaged, charged or otherwise encumbered, transmitted, seized under a warrant or writ of execution, or otherwise disposed of or made the subject of any other dealing. ”;

- (b) in subsection (2), by adding, after “interest” at the end of the subsection, the following—

“ or by his duly authorized agent ”;

- (c) by repealing subsection (3) and substituting the subsection following—

“ (3) For the purposes of this Act, the Minister shall maintain registers of applications for mining tenements and matters relating thereto, and of all instruments to which subsection (5) of this section applies, and regulations

Dealings in,
and registra-
tion of,
mining
tenements
and
interests
in mining
tenements.

made under this Act may make provision in respect of the dating or effect to be given to the provisional lodgement for registration of an instrument and for the conduct and inspection of a register, and as to the fees payable in respect of procedures relating thereto. ”;

- (d) by inserting after subsection (3) the new subsections following—

“ (4) Neither the Minister nor a person acting under his direction or authority is concerned with the effect in law of any instrument lodged pursuant to this section, nor does the acceptance of any such instrument for registration give to it any priority (other than in so far as registration may be taken to be constructive notice), force, effect or validity that it would not have had if this Division had not been enacted.

(5) Unless otherwise provided in this Act or the regulations, all instruments creating or assigning a legal or equitable interest in a mining tenement, or otherwise affecting or dealing with such an interest are required to be lodged for registration in the prescribed manner accompanied by the prescribed fee, at the office of the mining registrar or at the Department at Perth, the registration of all such instruments to be effected at the Department at Perth by an officer authorized by the Minister, and the time and date of lodgement entered in the register shall be taken to be the time and date at which registration was effected.

(6) Where an instrument is lodged for registration and the document is, in the opinion of the authorized officer,

erroneous or defective he may reject the lodgement but where he is of the opinion that the error or defect can be corrected—

- (a) he shall cause the time and date of lodgement and particulars of the instrument to be entered in the register, but shall cause the word “provisional” to be entered next to the entry specifying the time and date; and
- (b) he shall, by notice in writing to the person who lodged the instrument, direct that person to ensure that the error or defect is corrected on or before a date specified in the notice,

and if the direction is complied with on or before the date specified the instrument shall be deemed to have been duly registered at the time and date of lodgement originally entered in the register and the word “provisional” shall be deleted, but if the direction is not complied with on or before that date all the particulars that were entered in relation to the instrument shall be deleted from the register.

(7) No instrument shall be effectual to pass any estate or interest legal or equitable, in or affecting a mining tenement, or in any way to charge or encumber a mining tenement, or otherwise affect or deal with any interest in a mining tenement unless registered in accordance with this section.

(8) Where—

- (a) any instrument is required to be registered under this Act; or
- (b) any dealing is subject to the consent of the Minister whether expressly pursuant to this Act or by the agreement of the parties,

nothing in this section prevents, or affects the validity of, any agreement made in contemplation of a dealing to which this section applies where the instrument evidencing the agreement expressly provides that registration under this Act shall be effected, or such consent obtained, as the case may be, as a condition of the coming into force of the provisions of that instrument affected by the requirement that registration be effected or consent be obtained.

(9) The register maintained under this section shall be received by all courts as evidence of all matters required or authorized by this Act to be entered in the register.

(10) The Supreme Court may on the application of a person aggrieved by—

- (a) the omission of an entry from the register or the rejection of an instrument lodged for registration;
- (b) an entry made in the register without sufficient cause;
- (c) an entry wrongly existing in the register; or

- (d) an error or defect in an entry in the register,

make such order as it thinks fit directing the rectification of the register.

(11) The Supreme Court may, in proceedings under this section, decide any question that it is necessary or expedient to decide in connection with the rectification of the register.

(12) Notice of an application under this section shall be given to the Minister, who may appear and be heard and shall appear if so directed by the Supreme Court.

(13) An office copy of an order made by the Supreme Court may be served on the Minister and the Minister shall, upon receipt of the order, rectify the register accordingly.

(14) The Minister or a person acting under the direction or authority of the Minister is not liable to an action suit or proceedings for or in respect of an act or matter in good faith done or omitted to be done in exercise or purported exercise of any power or authority conferred by this section.

(15) The provisions of this section do not apply to or in relation to an instrument made before the coming into operation of this section. ”;

and

- (e) subject to their re-enactment in accordance with section 92 of this Act, by repealing subsections (4) to (9) as they appeared immediately prior to the coming into operation of this section.

89. The principal Act is amended by inserting, immediately after section 119, the new section following—

Section 119A
inserted.

“ 119A. Regulations made under section 162 of this Act may require that except as is otherwise specifically provided by the mortgage entered into by the parties, a mortgage shall be deemed to contain prescribed provisions. ”.

Mortgages of
mining
tenements.

90. The principal Act is amended—

Section 119B
inserted.

(a) by inserting immediately after section 119A the new subsection following—

“ 119B. (1) In this section, a reference to a country includes a reference to the Commonwealth and to a State or Territory of the Commonwealth. ”;

Beneficial
interests
conferred
on other
States or a
country, etc.

(b) by re-enacting subsections (4) to (8) of section 119 to stand as subsections (2) to (6) of section 119B amended, as to subsections (6) and (7) of section 119, by deleting “an interest” and substituting the following—

“ a relevant interest ”;

(c) by re-enacting subsection (9) of section 119 as subsection (7) of section 119B with amendments as follows—

“ (7) For the purposes of this section, “relevant interest” means an interest of the kind referred to by that term in section 8 of the *Companies (Western Australia) Code*, and that section shall have effect for the purposes of this Act as if a reference in that section to a person included a reference to a country. ”.

Section 121
amended.

91. Section 121 of the principal Act is amended, in subsection (1), by deleting "warden" and substituting the following—

" mining registrar ".

Section 122
amended.

92. Section 122 of the principal Act is amended, in subsection (2) and subsection (3), by deleting "a court of competent jurisdiction" and substituting in each case the following—

" the warden ".

Section 123
amended.

93. Section 123 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the subsection following—

Compensation in
respect of
mining.

" 123. (1) On and after coming into operation of the Mining Amendment Act 1985 in so far as the mineral is by virtue of section 9 the property of the Crown or the mining is authorized under this Act no compensation shall be payable in any case, and no claim lies for compensation, whether under this Act or otherwise—

(a) in consideration of permitting entry on to any land for mining purposes;

(b) in respect of the value of any mineral which is or may be in, on or under the surface of any land;

(c) by reference to any rent, royalty or other amount assessed in respect of the mining of the mineral; or

- (d) in relation to any loss or damage for which compensation can not be assessed according to common law principles in monetary terms. ”;

(b) in subsection (2)—

- (i) by deleting “The” and substituting the following—

“ Subject to this section and to sections 124 and 125 of this Act, the ”;

- (ii) by deleting “in respect of which a mining tenement has been granted” and substituting the following —

“ where mining takes place ”;

- (iii) by deleting “as a result of the grant of the mining tenement or the exercise of the rights conferred thereby” and substituting the following—

“ resulting or arising from the mining, whether or not lawfully carried out in accordance with this Act, and a person mining thereon is liable to pay compensation in accordance with this Act for any such loss or damage, or likely loss or damage, resulting from any act or omission on his part or on the part of his agents, sub-contractors or employees or otherwise occasioned with his authority ”;

- (c) by repealing subsection (3) and re-enacting it with amendments as follows—

“ (3) The amount of compensation payable to the owner of private land or to an occupier of Crown land or private land may be determined by agreement, but in default of agreement—

(a) if the owner or occupier, respectively, and the person liable for payment of the compensation so consent, may be determined by the warden, without requiring any formal proceedings to be taken, pursuant to a claim lodged with the mining registrar and made in the prescribed manner; and

(b) in any other case, shall be determined by the warden's court in formal proceedings, upon the application of the owner, the occupier or the person liable for the payment of the compensation, ”;

- (d) by repealing subsection (4) and re-enacting it with amendments as follows—

“ (4) Subject to subsection (1) and subsection (7) of this section and taking into account the matters referred to in section 124 and section 125, the amount payable under subsection (2) to which an owner or occupier may be found to be entitled may include compensation for—

(a) being deprived of the possession or use, or any particular use, of the natural surface of the land or any part of the land;

- (b) damage to the natural surface of the land or any part of the land;
- (c) severance of the land or any part of the land from other land of, or used by, that person;
- (d) any loss or restriction of a right of way or other easement or right;
- (e) the loss of, or damage to, improvements;
- (f) social disruption;
- (g) in the case of private land that is land under cultivation, any substantial loss of earnings, delay, loss of time, reasonable legal or other costs of negotiation, disruption to agricultural activities, disturbance of the balance of the agricultural holding, the failure on the part of a person concerned in the mining to observe the same laws or requirements in relation to that land as regards the spread of weeds, pests, disease, fire or erosion, or as to soil conservation practices, as are observed by the owner or occupier of that land; and
- (h) any reasonable expense properly arising from the need to reduce or control the damage resulting or arising from the mining,

and where the use for mining purposes of aircraft over or in the vicinity of any land (whether or not private land) occasions damage that damage shall be deemed to have been occasioned by an entry on the land thereby affected. ”;

(e) in subsection (5)—

(i) by deleting “the land the subject of a mining tenement” and substituting the following—

“ land where mining takes place ”;

(ii) by deleting “exercise of any rights conferred thereby” and substituting the following—

“ mining ”;

(iii) by deleting “the mining tenement” and substituting the following—

“ a mining tenement or ”; and

(iv) by deleting “loss and damage” and substituting the following—

“ loss or damage ”;

(f) in subsection (6)—

(i) by deleting “If while in occupation of any land that is the subject of a mining tenement, the holder of the mining tenement causes any damage” and substituting the following—

“ Where mining operations are carried out on or under any land the subject of a mining tenement and damage is thereby caused ”;

- (ii) by deleting “is entitled” and substituting the following—

“ are entitled ”; and

- (iii) by deleting “the damages sustained by each of them” and substituting the following—

“ all loss or damage thereby sustained ”;

(g) in subsection (7)—

- (i) by inserting after “1933” the following—

“ or which he holds by virtue of a lease or concession otherwise granted by or on behalf of the Crown for grazing purposes only ”; and

- (ii) by deleting “the mining tenement referred to in paragraph (b) of this subsection (in this subsection and in subsection (7a) of this section called “the holder”)” and substituting the following—

“ that mining tenement ”;

(h) by deleting subsection (7a);

(j) in subsection (9), by deleting “or (7a)” ”.

Section 124
amended.

94. Section 124 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “the warden’s court, in determining” and substituting the following—

“ a warden, when considering matters relating to ”;

(ii) by inserting before “damage”, in both places where it appears, the following—

“ loss or ”;

(b) in subsection (2)—

(i) by deleting “an application” and substituting the following—

“ a claim ”; and

(ii) by deleting “the warden’s court may order the holder of the mining tenement by or on whose behalf the rights conferred thereby as referred to in that section were exercised,” and substituting the following—

“ an order may be made requiring the person by or on whose behalf the mining was authorized ”;

(c) in subsection (3)—

(i) by deleting “making an order under subsection (2) of this section the warden’s court shall give consideration” and substituting the following—

“ an order is made under subsection (2) of this section consideration shall be given ”; and

- (ii) in paragraph (a), by deleting “application” and substituting the following—

“ claim ”; and

- (d) by repealing subsection (4).

95. Section 125 of the principal Act is amended by inserting after “1933” the following—

Section 125
amended.

“ or to the holder of a lease or concession otherwise granted by or on behalf of the Crown for grazing purposes only ”.

96. Section 126 of the principal Act is amended by adding the subsection following—

Section 126
amended.

“ (7) A security given under this section may, on application in writing by or on behalf of the person subscribing together with evidence satisfactory to the Minister showing cause why a discharge should be effected, be discharged, wholly or in part, by the Minister. ”.

97. Section 127 of the principal Act is amended by adding the subsection following—

Section 127
amended.

“ (3) For every warden’s court there shall be one or more bailiffs and, unless otherwise provided by the rules of Court made by the Governor, the provisions of section 16 of the Local Courts Act 1904 apply to and in relation to the appointment of any such bailiff and persons assisting him as if a reference to “the Minister” were a reference to the Minister administering this Act and a reference to “the magistrate” were a reference to the warden. ”.

98. Section 131 of the principal Act is amended by inserting after “other warden” the following—

Section 131
amended.

“ , not being a person appointed under subsection (2) of section 13, ”.

Section 134
amended.

99. Section 134 of the principal Act is amended—

(a) in subsection (1), in paragraph (e), by adding after “tenement” the following—

“ or as to the respective rights of the owner of the primary tenement and the special prospecting licence or mining lease for gold granted in relation to that tenement pursuant to section 56A or section 70 ”;

(b) in subsection (2), by adding after “direct” the following—

“ but an order for the payment of the costs of another person shall not be made against an applicant or a person making an objection unless the warden is satisfied that the application or objection so made was frivolous or vexatious ”; and

(c) in subsection (3), in paragraph (i), by adding after “mineral” the following—

“ or that a report thereon be made to the warden by any specified person ”.

Section 135
amended.

100. Section 135 of the principal Act is amended by adding the subsection following—

“ (4) A contested application for the grant of a mining tenement shall not be taken to be a dispute within the meaning of that term in subsection (1) of this section. ”.

Section 137
amended.

101. Section 137 of the principal Act is amended, in subsection (5), by inserting after “warden’s court” the following—

“ , and in any contested proceeding the reasons for the order made or decision given, ”.

102. Section 142 of the principal Act is amended— Section 142
amended.

- (a) in subsection (1) and subsection (2), by deleting “in a warden’s court” and substituting in each case the following—

“ under this Act ”;

- (b) in subsection (2), by deleting “the warden’s court has” and substituting the following—

“ a mining registrar and a warden respectively have ”;

- (c) in subsection (3), by deleting “as the court thinks fit”;

- (d) in subsection (4)—

(i) by deleting “the court shall allow”;

(ii) by deleting “in the court”; and

(iii) by inserting after “thereto” the following—

“ shall be allowed ”; and

- (e) in subsection (5), by deleting “as the court thinks just” and substituting the following—

“ as the mining registrar, or the warden, as the case may be, determines ”.

103. Section 143 of the principal Act is amended by deleting “Under Secretary” and substituting the following— Section 143
amended.

“ Director-General of Mines ”.

104. Section 146 of the principal Act is amended— Section 146
amended.

- (a) in subsections (2) and (3), by inserting before “Registrar” wherever it occurs the following—

“ Principal ”; and

- (b) in subsection (6), by deleting “registrar” and substituting the following—

“ Principal Registrar ”.

Section 148
amended.

105. Section 148 of the principal Act is amended—

- (a) by repealing subsection (4) and subsection (5) and re-enacting those subsections with amendments as follows—

“ (4) Upon notice in the prescribed form being filed in the warden’s court pursuant to subsection (2) of section 147 and served upon the warden, the warden shall cause a copy of the judgment, determination or decision appealed from together with the documents and things referred to in subsection (3) of this section required by the appellant for the purpose of the appeal to be transmitted to the Principal Registrar of the Supreme Court not later than 21 days after—

(a) in the case of original documents or things, the date of being so requested in writing by the appellant; but

(b) in the case of a copy document required to be certified to be correct by the warden or mining registrar and not compiled at the time of such a request in writing by the appellant, the date on which the copy was so compiled and certified,

and shall cause the appellant to be notified of the date on which the request was complied with.

(5) The appellant shall, within 21 days after filing notice of appeal, apply to set down the appeal for hearing by filing in the Central Office of the Supreme Court at Perth—

- (a) a copy of the notice of appeal;
and

- (b) a copy of any request made for the transmission of documents or things pursuant to this section.

(5a) Upon receipt by the Principal Registrar of the Supreme Court of a copy of the judgment, determination or decision appealed from, certified as correct by the warden, and of the documents or things and copies so requested, certified as correct by the mining registrar or the warden, the appeal shall be set down for hearing. ”; and

- (b) in subsection (6), by inserting before “Registrar” the following—

“ Principal ”.

106. Section 154 of the principal Act is amended by repealing subsection (4). Section 154 amended.

107. Section 155 of the principal Act is amended— Section 155 amended.

- (a) in subsection (1) and subsection (3), by deleting “operations” wherever it occurs; and

- (b) in subsection (4), by inserting before “mines” the following—

“ takes, removes or ”.

108. Section 156 of the principal Act is amended by deleting paragraph (b) and substituting the paragraph following— Section 156 amended.

“ (b) assaults, obstructs, resists or insults—

- (i) any warden or acting warden, or any officer of the Department; or

- (ii) any other person duly authorized under this Act to perform any act or duty, in the course of performance of that act or duty,

or who when required to do so by him fails to give to any such warden, officer or person information as to his name, address, or authorization for being on any land or who gives false or misleading information; ”.

Section 162
amended.

109. Section 162 of the principal Act is amended—

(a) in subsection (2)—

- (i) by inserting immediately after paragraph (c) a new paragraph as follows—

“ (ca) prescribe the manner in which fossicking may be carried out, or prohibit the carrying out of fossicking in prescribed areas or by prescribed means; ”;

- (ii) in paragraph (e), by adding after “tenement”, in the second place where it occurs, the following—

“ , and make provision for the exercise of a discretion by the Minister as to the basis upon which a rent shall be calculated ”;

- (iii) in paragraph (j) and in paragraph (m), by deleting “Under Secretary” and substituting in each case the following—

“ Director-General of Mines ”;

(iv) by inserting immediately after paragraph (k) a new paragraph as follows—

“ (ka) providing for any matter relating to the surveying of mining tenements, including—

- (i) requiring that surveying to be carried out by a surveyor (in this paragraph referred to as “the approved surveyor”) approved by the Minister or an officer of the Department in accordance with any specified written law, any instructions given by an officer of the Department, a warden or the Minister or any direction published by the Department, or any 2 or all 3 of the foregoing;
- (ii) the course to be adopted by the approved surveyor if he finds that a mining tenement or application therefor is not marked out in the prescribed shape referred to in section 105;
- (iii) the hearing by the warden’s court of disputes arising during the course

of that surveying concerning the positions of pegs or otherwise, or of objections to the survey of a mining tenement or of land the subject of an application for a mining tenement, and the determination by the Minister of those disputes or objections;

- (iv) requiring a person at whose request a survey of an isolated mining tenement has been expedited to pay for or contribute to the cost of any travelling undertaken to meet that request;
- (v) the correction of errors or omissions in that surveying and the completion of surveying that is uncompleted, the person by whom that correction or completion is to be carried out and the person from whom the cost of that correction or completion may be recovered;
- (vi) the person from whom the cost of independent check surveys requested

by officers of the Department after the completion of that surveying showing errors or omissions in that surveying, and the cost of correcting those errors or omissions, may be recovered;

- (vii) the fees and charges payable to the approved surveyor and the lodging of the account with the Department by the surveyor;
- (viii) the supply to an officer of the Department by the approved surveyor of evidence of the holding of current policies of insurance or exemptions under the Workers' Compensation and Assistance Act 1981 in respect of employees;
- (ix) the taking out by the approved surveyor of policies of professional indemnity and public liability insurance;
- (x) the preparation of plans of mining tenements surveyed: ”;

and

(v) in paragraph (1), by deleting "the surveying of mining tenements,";

and

(b) by repealing subsection (4).

Second
Schedule
amended.

110. The Second Schedule to the principal Act is amended—

(a) in clause 2—

(i) by deleting "section 42 or 48" in the first place where it appears and substituting the following—

" section 42, 48 or 61 or pursuant to section 153 "; and

(ii) by deleting "section 42 or 48 of" in paragraph (a);

(b) by inserting immediately after clause 2 the new clause following—

Private land
and
consents to
mining.

" 2A. A consent given under the repealed Act to a tenement granted on private land shall be taken to be applicable to the mining tenement in respect of that land which, by the operation of this Schedule, the tenement under the repealed Act becomes. ";

(c) in clause 6, in subclause (1), by inserting after "that date" the following—

" and shall then expire ";

(d) in clause 8, in paragraph (c) of subclause (3), by inserting after "issued" the following—

" and the grant expires at the end of the period of 2 years from that date subject to subclause (4) of this clause "; and

- (e) in clause 15, by deleting "have the same force and effect as though they were enacted in this Act." and substituting the following—

" have, and shall be deemed always to have had, the same force and effect as if they had been enacted by way of an amendment to this Schedule and on publication of the Order in Council in the *Government Gazette*, this Schedule shall be amended accordingly. "
